> fall on such land feeds the stream, the land is in consequence entitled, so to speak, to the use of the waters." *Anaheim Union Water Co.* v. *Fuller, supra.*

In direct conflict to the preceding, it has been held that all lands belonging to one owner, irrespective of the time and manner of their acquisition, are riparian if any part borders on a watercourse. *Jones* v. *Conn,* 39 Ore. 30, approved in *Clark* v. *Allaman,* 71 Kan. 206. The principal case adopts the first view, with the qualification, however, that it is not sufficient that land, to be riparian, lie within the general watershed, but it is necessary that the land be within the specific watershed of that portion of the stream to which it is claimed to be riparian. The substantial question in the case is one of priorities, and the court might well have treated a decision of the question of what are "riparian" lands as immaterial and have held, as a matter of principle, that the defendant was not to be permitted to nullify the effect of the plaintiff's senior right through the acquisition of a small strip of land above the plaintiff.

WILLS—GIFT TO SUBSCRIBING WITNESS.—One of the two subscribing witnesses to a will was also a beneficiary. A statute made all gifts to a subscribing witness void unless there were two other competent witnesses to the will. Several bystanders, who had been present when testator executed the instrument, were introduced as witnesses to the will and were able to testify to the facts of testator's signature in conformity with the statute. *Held,* the term "witness to a will" has a well-settled meaning, and means one who has attested the will by subscribing his name thereto. *In re Johnson's Estate,* (Wis., 1921), 183 N. W. 888.

Some authorities hold that attestation to a will does not require subscription by a witness. *Swift* v. *Wiley,* 1 B. Mon. 114; *Tobin* v. *Haack,* 79 Minn. 101. But the weight of authority is that attestation includes the act of subscription. *Calkins* v. *Calkins,* 216 Ill. 458. Under a statute requiring a will to be in writing and "witnessed" by two witnesses, it has been held that the witnesses should subscribe the will. *In re Boyeus' Will,* 23 Ia. 354. In Pennsylvania, where the statute requires proof of the signature of the testator by at least two competent witnesses, subscription to the will is not necessary to make it valid. *In re Irvine's Estate,* 206 Pa. 1. The principal case is in accord with the weight of authority where this question has been presented. Yet no case requires that the subscribing witnesses be summoned to prove the will, or that it fail without them or upon their disputing its authenticity. The probate of a will duly executed does not depend on the lives of the witnesses, their recollection of the facts, or their truthfulness; any evidence is competent which tends to prove the legal execution of the instrument. *Lyons* v. *Van Riper,* 26 N. J. Eq. 337; *In re Claflin's Will,* 73 Vt. 129. The evidence of subscribing witnesses is entitled to no greater credence than that of others having an equal opportunity to know the facts on issues of sanity, undue influence, and the like. PAGE ON WILLS, Sec. 366; *Higginbotham* v. *Higginbotham,* 106 Ala. 314; *McTaggart* v. *Thompson,* 14 Pa. St. 149. The requirement of subscribing witnesses is for purposes of

more readily identifying the will as genuine. *Appeal of Canada,* 47 Conn. 450; *Pollock* v. *Glassell,* 2 Gratt. 439. In view of the fact that under common law rules of evidence a will might be established or overthrown by the testimony of witnesses other than the subscribing witnesses, it would not seem unreasonable to say that the term "competent" witness, as used in this statute, need not have been construed to mean a subscribing witness. A dissenting opinion distinguishes between competent witnesses and competent subscribing witnesses, and maintains that the legislature had used the term "competent" witness purposely, not meaning thereby a subscribing witness. Since the present statute was an amendment of a previous one in which the term "competent subscribing" witness was used, this contention seems the more forceful. The majority opinion characterized this omission as being legislative inadvertence. While sheer weight of precedent supports the decision, the rule of *In re Irvine's Estate, supra,* and the dissent in the principal case seem to have reason with them.

WILLS—TESTATOR COMPELLED TO MAKE A WILL—PROOF OF ANIMUS TESTANDI.—An instrument, sufficient in form to constitute a duly executed will, was offered for probate. The purported will was found in the archives of the Masonic Order. Testimony showed that thirteen years prior to his death deceased executed the instrument while there was being conferred on him a degree of the secret order mentioned, and that the making of the will was a part of the ceremony required of all candidates who had not theretofore made a will. *Held,* deceased executed the instrument intending it to be his will. *In re Watkins' Estate,* (Wash., 1921), 198 Pac. 721.

An instrument to be a will must fulfill two requirements: it must be executed in accordance with the requirements of the statute; and the testator, at the time he executed it, must have had the *animus testandi.* There is no question in the principal case as to the former requirement, but the question is raised as to the latter—whether there is present the *animus testandi* when one is compelled to make a will, but is left free as to its provisions. In a North Carolina case decided in 1920 the deceased did not want to make a will, but the family physician informed him that he could not recover and compelled him to make one. Evidence showed that the deceased was uninfluenced as to its provisions. It was held that the instrument expressed the will of the testator and was therefore valid, even though executed under compulsion. There was a strong dissenting opinion, however, wherein it was argued that the undue influence used in getting the deceased to execute the instrument kept it from being his will. *In re Lowe's Will,* 104 S. E. 143. The decision in the principal case turns upon the question as to the amount of proof required to establish whether or not the instrument expresses the will of the testator. In establishing lack of *animus testandi,* the same rule governs as in establishing undue influence. The general rule is that the burden is upon the contestants. *Egan* v. *Egan's Ex'r,* 189 Ky. 332; *Burke* v. *Burke,* 184 N. Y. Supp. 673; *Quaratiello* v. *Di Biasi,* (R. I., 1921), 112 Atl. 215; *Lister* v. *Smith,* 3 Swabey & T. 282. In *Roe* v. *Duty,* (Wash., 1921), 197 Pac. 47, it is held: "In the contest of a will for undue influence, the